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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HERMAN LEE BARTON JR.,

11 Plaintiff,

12 v.

13 UNITED STATES SENATE,

14 Defendant.

CASE NO. C17-1105JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court are *pro se* Plaintiff Herman Lee Barton Jr.'s complaint (Compl.
17 (Dkt. # 5)) and Magistrate Judge James P. Donohue's order granting Mr. Barton *in forma*
18 *pauperis* ("IFP") status and recommending that the court review his complaint pursuant
19 to 28 U.S.C. § 1915(e)(2)(B) before issuing summons (IFP Order (Dkt. # 4)). The court
20 finds that Mr. Barton's claims are frivolous and that he fails to state a claim. *See* 28
21 U.S.C. § 1915(e)(2)(B)(i)-(ii). The court also finds that amendment of Mr. Barton's

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1 frivolous claims would be futile. The court therefore DISMISSES Mr. Barton's
2 complaint with prejudice pursuant to Section 1915.

3 II. BACKGROUND

4 Mr. Barton sues Defendant United States Senate for failing to set a sufficient
5 monthly social security benefit in Whatcom County, Washington. (Compl. at 2.) He
6 asserts that the minimum cost of living in Whatcom County is \$1,775.00 per month, or
7 \$21,300.00 per year, and that irrespective of whether a disabled person has paid federal
8 taxes, "the cost of living is still the cost of living." (*Id.*) Accordingly, he seeks to hold a
9 jury trial on the cost of living and obtain declaratory and injunctive relief setting these
10 cost of living values for purposes of calculating social security benefits. (*Id.* at 3.) He
11 also asserts that disabled people "should have" a constitutional right to a good quality of
12 life. (*Id.* at 2.)

13 III. ANALYSIS

14 "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a
15 claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
16 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); see also *Telesaurus*
17 *VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010). "A claim has facial plausibility
18 when the plaintiff pleads factual content that allows the court to draw the reasonable
19 inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.
20 The court, however, need not accept as true a legal conclusion presented as a factual
21 allegation. *Id.* Furthermore, although "the allegations of [a *pro se* plaintiff's] complaint,
22 'however inartfully pleaded' are held 'to less stringent standards than normal pleadings

1 drafted by lawyers,”” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (quoting *Haines v. Kerner*,
2 404 U.S. 519, 520 (1972)), dismissal remains appropriate where “a liberal construction
3 does not remedy the palpable deficiencies in [the] complaint,” *Wallmuller v. Russell*,
4 No. C14-5121RBL-JRC, 2014 WL 2475978, at *2 (W.D. Wash. June 3, 2014).

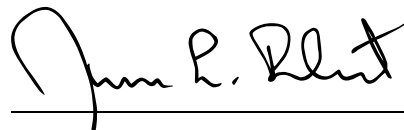
5 The allegations in Mr. Barton’s complaint do not give rise to a plausible inference
6 of liability and evince the frivolity of his claim. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii).
7 Mr. Barton fails to identify any legal authority supporting entitlement to the relief he
8 seeks or this court’s ability to effectuate that relief. (*See* Compl. at 2-4.) Indeed, Mr.
9 Barton tacitly acknowledges that he has no constitutional right that supports the relief he
10 seeks. (*Id.* at 2 (arguing that disabled people “should have” a constitutional right to
11 “good quality of life”).) Furthermore, United States Senators enjoy immunity for actions
12 taken in their legislative capacity. *See San Pedro Hotel Co. v. City of L.A.*, 159 F.3d 470,
13 476 (9th Cir. 1998). Finally, to the extent Mr. Barton challenges his social security
14 benefit, the United States Senate is not the appropriate defendant, *see* 42 U.S.C. § 405(g),
15 this suit is not the appropriate vehicle, *see* 20 C.F.R. § 416.1481, and he appears to
16 already have a lawsuit pending in this district that challenges his benefits, *see Barton v.*
17 *Berryhill*, No. C17-0609DWC (W.D. Wash.), Dkt. # 10 at 2 (suing Acting Commissioner
18 of the Social Security Administration Nancy A. Berryhill for paying insufficient
19 benefits); *see also Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing
20 *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988)); *Bailey*, 846 F.2d at 1021
21 (“[C]ourts have also held that an IFP complaint that merely repeats pending or previously
22 litigated claims may be considered abusive and dismissed under the authority of [Section

1 1915].”). Accordingly, the court concludes that Mr. Barton’s lawsuit fails to state a
2 claim for relief and is frivolous. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii). The incurable
3 legal shortcomings make it “absolutely clear” that amendment could not remedy the
4 defects in Mr. Barton’s complaint, and the court accordingly denies leave to amend.
5 *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).

6 IV. CONCLUSION

7 Based on the foregoing analysis, the court DISMISSES Mr. Barton’s complaint
8 with prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii).

9 Dated this 2d day of August, 2017.

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12 JAMES L. ROBART
13 United States District Judge
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